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4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

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7 THE BANK OF NEW YORK MELLON,
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Plaintiff(s),

v.

THE VININGS HOMEOWNERS
ASSOCIATION, et al.,

Defendant(s).

Case No. 2:17-CV-1804 JCM (CWH)

ORDER

Presently before the court is defendant Red Rock Financial Services' ("RRFS") motion to dismiss. (ECF No. 8). Plaintiff Bank of New York Mellon ("BNYM") filed a response (ECF No. 15), to which RRFS replied (ECF No. 16).

Also before the court is defendant SFR Investments Pool 1, LLC's ("SFR") motion to dismiss. (ECF No. 17). Plaintiff filed a response (ECF No. 21), to which SFR replied (ECF No. 23).

I. Introduction

This action involves the parties' interests in real property located at 7409 Fountain Crest Avenue, Las Vegas, Nevada, 89113 ("the property"). (ECF No. 1).

a. Plaintiff's interest in the property

On May 9, 2006, Mike Zenteno and Gloria Figueroa ("the borrowers") obtained title to the property. *Id.* The borrowers obtained a loan from Countrywide Home Loans, Inc. ("Countrywide") for \$294,000 to finance ownership of the property. *Id.* The borrowers executed a promissory note in favor of Countrywide, as well as a deed of trust to secure repayment of the

1 loan. *Id.* The deed of trust was recorded on May 12, 2006. *Id.* The deed of trust was assigned to
2 plaintiff via a corporate assignment of deed of trust. *Id.*

3 *b. Defendants' interest in the property*

4 On May 11, 2012, RRFS, acting on behalf of defendant the Vinings Homeowners
5 Association ("the HOA") recorded a notice of delinquent assessment lien, stating an amount due
6 of \$926.68. *Id.* On July 2, 2012, RRFS, on behalf of the HOA, recorded a notice of default and
7 election to sell, stating an amount due of \$1,941.61. *Id.* On April 4, 2013, RRFS, on behalf of the
8 HOA, recorded a notice of foreclosure sale, stating an amount due of \$4,000.31. *Id.*

9 On July 15, 2013, the HOA foreclosed against the property. *Id.* Alex Berezovsky
10 purchased the property at the foreclosure sale for \$7,100. *Id.* A foreclosure deed was recorded on
11 July 25, 2013. *Id.*

12 On May 30, 2014, Berezovsky conveyed title to the property to the Aber Trust and then to
13 Noesis, both via quitclaim deed recorded on May 30, 2014. *Id.* On September 17, 2014, SFR
14 obtained title to the property via quitclaim deed. *Id.*

15 *c. Plaintiff's complaint*

16 Plaintiff challenges the legal effect of the July 15, 2013, HOA foreclosure sale and seeks
17 to preserve its pre-sale interest in the property. *Id.* Plaintiff alleges the following causes of action:
18 (1) quiet title/declaratory relief against all defendants; (2) breach of NRS 116.1113 against the
19 HOA and RRFS; (3) wrongful foreclosure against the HOA and RRFS; and (4) injunctive relief
20 against SFR. (ECF No. 1).

21 **II. Legal Standard**

22 A court may dismiss a complaint for "failure to state a claim upon which relief can be
23 granted." Fed. R. Civ. P. 12(b)(6). A properly pled complaint must provide "[a] short and plain
24 statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2); *Bell*
25 *Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). While Rule 8 does not require detailed
26 factual allegations, it demands "more than labels and conclusions" or a "formulaic recitation of the
27 elements of a cause of action." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation omitted).

1 “Factual allegations must be enough to rise above the speculative level.” *Twombly*, 550
2 U.S. at 555. Thus, to survive a motion to dismiss, a complaint must contain sufficient factual
3 matter to “state a claim to relief that is plausible on its face.” *Iqbal*, 556 U.S. at 678 (citation
4 omitted).

5 In *Iqbal*, the Supreme Court clarified the two-step approach district courts are to apply
6 when considering motions to dismiss. First, the court must accept as true all well-pled factual
7 allegations in the complaint; however, legal conclusions are not entitled to the assumption of truth.
8 *Id.* at 678–79. Mere recitals of the elements of a cause of action, supported only by conclusory
9 statements, do not suffice. *Id.* at 678.

10 Second, the court must consider whether the factual allegations in the complaint allege a
11 plausible claim for relief. *Id.* at 679. A claim is facially plausible when the plaintiff’s complaint
12 alleges facts that allow the court to draw a reasonable inference that the defendant is liable for the
13 alleged misconduct. *Id.* at 678.

14 Where the complaint does not permit the court to infer more than the mere possibility of
15 misconduct, the complaint has “alleged—but not shown—that the pleader is entitled to relief.” *Id.*
16 (internal quotation marks omitted). When the allegations in a complaint have not crossed the line
17 from conceivable to plausible, plaintiff’s claim must be dismissed. *Twombly*, 550 U.S. at 570.

18 The Ninth Circuit addressed post-*Iqbal* pleading standards in *Starr v. Baca*, 652 F.3d 1202,
19 1216 (9th Cir. 2011). The *Starr* court stated, in relevant part:

20 First, to be entitled to the presumption of truth, allegations in a complaint or
21 counterclaim may not simply recite the elements of a cause of action, but must
22 contain sufficient allegations of underlying facts to give fair notice and to enable
23 the opposing party to defend itself effectively. Second, the factual allegations that
are taken as true must plausibly suggest an entitlement to relief, such that it is not
unfair to require the opposing party to be subjected to the expense of discovery and
continued litigation.

24 *Id.*

25 **III. Discussion**

26 In its motion, RRFS argues that plaintiff’s causes of action for breach of NRS 116.1113
27 and wrongful foreclosure are time-barred. (ECF No. 8). RRFS also argues that that plaintiff’s
28 cause of action for quiet title fails to state a claim against RRFS because RRFS does not claim an

1 interest in the property. *Id.* Plaintiff responds that its causes of action for NRS 116.1113 and
2 wrongful foreclosure are not time-barred. (ECF No. 15). Plaintiff asserts that RRFS is a necessary
3 party to this litigation and that its complaint states claims upon which relief can be granted. *Id.*

4 SFR's motion to dismiss focuses on the statute of limitation concerns raised in RRFS'
5 motion, and additionally argues that plaintiff's quiet title cause of action is time-barred. (ECF No.
6 17). Plaintiff responds that SFR mischaracterizes its cause of action for quiet title and SFR applies
7 the incorrect statutory subsection when analyzing the relevant limitations period. (ECF No. 21).

8 *a. Statute of limitations*

9 *1. Quiet title*

10 Claim (1) of plaintiff's complaint alleges quiet title against all defendants. Under Nevada
11 law, "[a]n action may be brought by any person against another who claims an estate or interest in
12 real property, adverse to the person bringing the action for the purpose of determining such adverse
13 claim." Nev. Rev. Stat. § 40.010. "A plea to quiet title does not require any particular elements,
14 but each party must plead and prove his or her own claim to the property in question and a
15 plaintiff's right to relief therefore depends on superiority of title." *Chapman v. Deutsche Bank*
16 *Nat'l Trust Co.*, 302 P.3d 1103, 1106 (Nev. 2013) (internal quotation marks and citations omitted).
17 Therefore, for plaintiff to succeed on its quiet title action, it needs to show that its claim to the
18 property is superior to all others. *See also Breliant v. Preferred Equities Corp.*, 918 P.2d 314, 318
19 (Nev. 1996) ("In a quiet title action, the burden of proof rests with the plaintiff to prove good title
20 in himself.").

21 Under NRS 40.010, an "action may be brought by any person against another who claims
22 an estate or interest in real property, adverse to the person bringing the action, for the purpose of
23 determining such adverse claim." Nev. Rev. Stat. § 40.010. Further, NRS 11.070 sets forth a five-
24 year limitations period for quiet title claims. Nev. Rev. Stat. § 11.070. The foreclosure sale took
25 place on July 15, 2013. Plaintiff brought this lawsuit less than five years later, on June 30, 2017.
26 Accordingly, plaintiff's quiet title claim is not barred by the applicable statute of limitations.

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1 2. *Breach of NRS 116.1113*

2 Claim (2) of BNYM's complaint alleges that the HOA and RRFS violated NRS 116.1113,
3 which imposes an obligation of good faith in every contract or duty governed by Chapter 116.
4 (ECF No. 1). For relief, BNYM seeks damages in the amount of either the property's fair market
5 value or the unpaid principal on the loan as of the date of the HOA sale. *Id.*

6 Because claim (2) is a claim for damages based on the alleged breach of a statutory duty,
7 it must be brought within three years. *See Nev. Rev. Stat. § 11.190(3)(a).* The foreclosure sale
8 took place on July 15, 2013. BNYM brought this lawsuit more than three years later, on June 30,
9 2017. Therefore, claim (2) is time-barred, and RRFS and SFR's motions to dismiss will be granted
10 as to this claim.

11 3. *Wrongful foreclosure*

12 Claim (3) of plaintiff's complaint alleges that the foreclosure sale was wrongful because
13 the HOA failed to give proper notice and an opportunity to cure the deficiency and the HOA sold
14 the property for a grossly inadequate amount. (ECF No. 1). Plaintiff seeks damages in the amount
15 of the property's fair market value or the unpaid principal loan balance as of the time of the
16 foreclosure sale. (ECF No. 1).

17 A tortious wrongful foreclosure claim "challenges the authority behind the foreclosure, not
18 the foreclosure act itself." *McKnight Family, L.L.P. v. Adept Mgmt.*, 310 P.3d 555, 559 (Nev.
19 2013). RRFS' authority to foreclose on the HOA lien on behalf of the HOA arose from Chapter
20 116, essentially rendering claim (3) a claim for damages based on liability created by a statute.
21 Therefore, claim (3) is time-barred under NRS 11.190(3)(a) because it was not brought within
22 three years.

23 4. *Injunctive relief*

24 Claim (4) of plaintiff's complaint will be dismissed without prejudice as the court follows
25 the well-settled rule in that a claim for "injunctive relief" standing alone is not a cause of action.
26 *See, e.g., In re Wal-Mart Wage & Hour Emp't Practices Litig.*, 490 F. Supp. 2d 1091, 1130 (D.
27 Nev. 2007); *Tillman v. Quality Loan Serv. Corp.*, No. 2:12-CV-346 JCM RJJ, 2012 WL 1279939,
28 at *3 (D. Nev. Apr. 13, 2012) (finding that "injunctive relief is a remedy, not an independent cause

1 of action”); *Jensen v. Quality Loan Serv. Corp.*, 702 F. Supp. 2d 1183, 1201 (E.D. Cal. 2010) (“A
2 request for injunctive relief by itself does not state a cause of action.”).

3 *b. Whether BNYM states a claim upon which relief can be granted against RRFS*

4 Defendant RRFS asserts that BNYM’s cause of action for quiet title fails to state a claim
5 upon which relief can be granted against RRFS. (ECF No. 8).

6 Under Nevada law, “[a]n action may be brought by any person against another who claims
7 an estate or interest in real property, adverse to the person bringing the action for the purpose of
8 determining such adverse claim.” Nev. Rev. Stat. § 40.010. “A plea to quiet title does not require
9 any particular elements, but each party must plead and prove his or her own claim to the property
10 in question and a plaintiff’s right to relief therefore depends on superiority of title.” *Chapman v.*
11 *Deutsche Bank Nat’l Trust Co.*, 302 P.3d 1103, 1106 (Nev. 2013) (citations and internal quotation
12 marks omitted). Therefore, for plaintiff to succeed on its quiet title action, it needs to show that
13 its claim to the property is superior to all others. *See also Breliant v. Preferred Equities Corp.*,
14 918 P.2d 314, 318 (Nev. 1996) (“In a quiet title action, the burden of proof rests with the plaintiff
15 to prove good title in himself.”).

16 Section 116.3116(1) of the Nevada Revised Statutes¹ gives an HOA a lien on its
17 homeowners’ residences for unpaid assessments and fines; moreover, NRS 116.3116(2) gives
18 priority to that HOA lien over all other liens and encumbrances with limited exceptions—such as
19 “[a] first security interest on the unit recorded before the date on which the assessment sought to
20 be enforced became delinquent.” Nev. Rev. Stat. § 116.3116(2)(b).

21 The statute then carves out a partial exception to subparagraph (2)(b)’s exception for first
22 security interests. *See* Nev. Rev. Stat. § 116.3116(2). In *SFR Investments Pool 1 v. U.S. Bank,*
23 *N.A.*, the Nevada Supreme Court provided the following explanation:

24 As to first deeds of trust, NRS 116.3116(2) thus splits an HOA lien into two pieces,
25 a superpriority piece and a subpriority piece. The superpriority piece, consisting of
26 the last nine months of unpaid HOA dues and maintenance and nuisance-abatement
charges, is “prior to” a first deed of trust. The subpriority piece, consisting of all
other HOA fees or assessments, is subordinate to a first deed of trust.

27
28 ¹ The 2015 Legislature revised Chapter 116 substantially. 2015 Nev. Stat., ch. 266. Except where
otherwise indicated, the references in this order to statutes codified in NRS Chapter 116 are to the
version of the statutes in effect in 2011–13, when the events giving rise to this litigation occurred.

1 334 P.3d 408, 411 (Nev. 2014) (“*SFR Investments*”).

2 Chapter 116 of the Nevada Revised Statutes permits an HOA to enforce its superpriority
3 lien by nonjudicial foreclosure sale. *Id.* at 415. Thus, “NRS 116.3116(2) provides an HOA a true
4 superpriority lien, proper foreclosure of which will extinguish a first deed of trust.” *Id.* at 419; *see*
5 *also* Nev. Rev. Stat. § 116.31162(1) (providing that “the association may foreclose its lien by sale”
6 upon compliance with the statutory notice and timing rules).

7 NRS 116.3116 codifies the Uniform Common Interest Ownership Act (“UCIOA”) in Nevada. *See*
8 Nev. Rev. Stat. § 116.001 (“This chapter may be cited as the Uniform Common-Interest
9 Ownership Act”); *see also SFR Investments*, 334 P.3d at 410. Numerous courts have interpreted
10 the UCIOA and NRS 116.3116 as imposing a commercial reasonableness standard on foreclosure
11 of association liens.²

12 BNYM’s complaint states a claim upon which relief can be granted. BNYM’s complaint
13 alleges that the sale was commercially unreasonable, and lists multiple alleged deficiencies in the
14 sale proceedings. (ECF No. 1). BNYM alleges that defendants failed to provide plaintiff with
15 sufficient notice of the foreclosure proceedings and of the lien amount. *Id.* Further, BNYM alleges
16 that it tendered payment sufficient to satisfy the superpriority portion of the lien to the HOA prior
17 to the foreclosure sale, and the HOA’s wrongful rejection of that tender voids the foreclosure sale.
18 *Id.* BNYM’s complaint plausibly alleges a claim for quiet title that survives RRFS’ motion to
19 dismiss. *See Iqbal*, 556 U.S. at 678.

20 RRFS also asserts that it does not maintain a current interest in the property, and as such
21 plaintiff’s claim for quiet title fails to state a claim upon which relief can be granted. (ECF No.

22 ² *See, e.g., Bayview Loan Servicing, LLC v. Alessi & Koenig, LLC*, 962 F. Supp. 2d 1222, 1229
23 (D. Nev. 2013) (“[T]he sale for \$10,000 of a Property that was worth \$176,000 in 2004, and which
24 was probably worth somewhat more than half as much when sold at the foreclosure sale, raises
25 serious doubts as to commercial reasonableness.”); *SFR Investments*, 334 P.3d at 418 n.6 (noting
26 bank’s argument that purchase at association foreclosure sale was not commercially reasonable);
27 *Thunder Props., Inc. v. Wood*, No. 3:14-cv-00068-RCJ-WGC, 2014 WL 6608836, at *2 (D. Nev.
28 Nov. 19, 2014) (concluding that purchase price of “less than 2% of the amounts of the deed of
trust” established commercial unreasonableness “almost conclusively”); *Rainbow Bend
Homeowners Ass’n v. Wilder*, No. 3:13-cv-00007-RCJ-VPC, 2014 WL 132439, at *2 (D. Nev.
Jan. 10, 2014) (deciding case on other grounds but noting that “the purchase of a residential
property free and clear of all encumbrances for the price of delinquent HOA dues would raise
grave doubts as to the commercial reasonableness of the sale under Nevada law”); *Will v. Mill
Condo. Owners’ Ass’n*, 848 A.2d 336, 340 (Vt. 2004) (discussing commercial reasonableness
standard and concluding that “the UCIOA does provide for this additional layer of protection”).

1 8). Dismissal of RRFS at this juncture would be premature, as the court has not determined the
2 validity or effect of the foreclosure sale.

3 RRFS argues that plaintiff's complaint should be dismissed because RRFS "agrees with
4 Plaintiff that Plaintiff's deed of trust should survive foreclosure because [RRFS] never intended to
5 foreclose on the super-priority portion of the HOA lien." (ECF No. 8). RRFS thus concludes that
6 there is no justiciable controversy between RRFS and plaintiff. However, RRFS' position is not
7 the position of defendant SFR. *See* (ECF No. 17 at 6). RRFS' motion does not adequately
8 demonstrate that its theory of the case provides for dismissal of BNYM's claim for quiet title
9 against RRFS.

10 **IV. Conclusion**

11 The court will dismiss plaintiff's second and third causes of action for failure to comply
12 with the applicable statute of limitations. The court will dismiss plaintiff's fourth cause of action
13 for failure to state a claim upon which relief can be granted.

14 Accordingly,

15 IT IS HEREBY ORDERED, ADJUDGED, and DECREED that RRFS' motion to dismiss
16 (ECF No. 8) be, and the same hereby is, GRANTED in part and DENIED in part, consistent with
17 the foregoing.

18 IT IS FURTHER ORDERED that SFR's motion to dismiss (ECF No. 17) be, and the same
19 hereby is, GRANTED in part and DENIED in part, consistent with the foregoing.

20 DATED May 8, 2018.

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22 _____
UNITED STATES DISTRICT JUDGE